

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STEPHEN J. PITTS,

Respondent,

v.

JANET K. WILLIAMS and RONALD J. LEVY,

Appellants.

DOCKET NUMBER WD71275

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 6, 2010

APPEAL FROM

The Circuit Court of Carroll County, Missouri
The Honorable David H. Miller, Judge

APPELLATE JUDGES

Division Two: Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard
and Alok Ahuja, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STEPHEN J. PITTS,)
)
Respondent,)
v.)
)
JANET K. WILLIAMS and RONALD J.)
LEVY,)
)
Appellants.)

WD71275

Carroll County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and
Victor C. Howard and Alok Ahuja, Judges

Janet Williams and Ronald Levy, employees of the Missouri Department of Social Services – Children’s Division, appeal the judgment of the Circuit Court of Carroll County granting a writ of mandamus requiring the Children’s Division to commence the administrative appeal process and to release the investigative records allegedly substantiating the finding by the Children’s Division that Stephen Pitts had committed child abuse or neglect. On appeal, the Children’s Division argues that section 210.150.2(5) does not require it to produce such documentation while a criminal investigation is ongoing. We disagree and affirm the judgment of the trial court.

AFFIRMED.

Division Two holds:

An alleged perpetrator has the right to appeal the finding of the Children’s Division that the alleged perpetrator has abused or neglected a child. However, under section 210.150.2(5) the alleged perpetrator is not permitted to access the report substantiating that finding if there are “pending criminal charges” until an indictment has been returned or an information has been filed.

In refusing to allow Pitts to access his file and proceed with this appeal, the Children's Division maintained that the definition of "pending criminal charges" includes an ongoing criminal investigation. We disagree and instead concur with the trial court which determined that the phrase is meant to only encompass criminal proceedings initiated by a felony complaint but has not yet resulted in an information being filed. This definition is consistent with a plain language reading of the statute and is also in harmony with section 210.152.3 which notes that charges, unlike an investigation, will be terminated by a *court's* disposition or dismissal of an initiated proceeding before a *court*.

Consequently, we find that pursuant to section 210.150.2(5), the investigative records contemplated by that statute are accessible by an alleged perpetrator, subject to additional safety concerns, unless the alleged perpetrator has been charged with a felony by the filing of a complaint arising out of the facts and circumstances identified in the investigative records and the felony complaint has not yet resulted in an information after a preliminary hearing has been held or waived and the case has been bound over for trial. In all other instances – misdemeanor charged by indictment; misdemeanor charged by information; felony originally charged by indictment; a criminal *investigation* pending without criminal *charges* being filed – the alleged perpetrator is entitled to the records contemplated by section 210.150.2(5).

Opinion by: Mark D. Pfeiffer, Judge

July 6, 2010

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